

## Department of Energy

## § 1023.4

(3) The Board's telephone numbers are (202) 426-9316 (voice) and (202) 426-0215 (facsimile).

(b) *Organization of the Board.* As required by the CDA, the Board consists of a Chair, a Vice Chair, and at least one other member. Members are designated Administrative Judges. The Chair is designated Chief Administrative Judge and the Vice Chair, Deputy Chief Administrative Judge.

### § 1023.3 Principles of general applicability.

(a) *Adjudicatory functions.* The following principles shall apply to all adjudicatory activities whether pursuant to the authority of the CDA, authority delegated under this part, or authority of other laws, rules, or directives.

(1) The Board shall hear and decide each case independently, fairly, and impartially.

(2) Decisions shall be based exclusively upon the record established in each case. Written or oral communication with the Board by or for one party is not permitted without participation or notice to other parties. Except as provided by law, no person or agency, directly or indirectly involved in a matter before the Board, may submit off the record to the Board or the Board's staff any evidence, explanation, analysis, or advice (whether written or oral) regarding any matter at issue in an appeal, nor shall any member of the Board or of the Board's staff accept or consider ex parte communications from any person. This provision does not apply to consultation among Board members or staff or to other persons acting under authority expressly granted by the Board with notice to parties. Nor does it apply to communications concerning the Board's administrative functions or procedures, including ADR.

(3) Decisions of the Board shall be final agency decisions and shall not be subject to administrative appeal or administrative review.

(b) *Alternative Dispute Resolution (ADR) Functions.* (1) Board judges and personnel shall perform ADR related functions impartially, with procedural fairness, and with integrity and diligence.

(2) Ex parte communications with Board staff and judges limited to the nature, procedures, and availability of ADR through the Board are permitted and encouraged. Once parties have agreed to engage in ADR and have entered into an ADR agreement accepted by the Board, ex parte communications by Board neutrals, support staff and parties shall be as specified by any applicable agreements or protocols and as is consistent with law, integrity, and fairness.

(3) Board-supplied neutrals and support personnel shall keep ADR matters confidential and comply with any confidentiality requirements of ADR agreements accepted by the Board. Board personnel may not disclose any confidential information unless permitted by the parties or required to do so by law.

### § 1023.4 Authorities.

(a) *Contract Disputes Act Authorities.* The CDA imposes upon the Board the duty, and grants it the powers necessary, to hear and decide, or to otherwise resolve through agreed procedures, appeals from decisions made by agency contracting officers on contractor claims relating to contracts entered into by the DOE or relating to contracts of another agency, as provided in Section 8(d) of the CDA, 41 U.S.C. 607(d). The Board may issue rules of practice or procedure for proceedings pursuant to the CDA. The CDA also imposes upon the Board the duty, and grants it powers necessary, to act upon petitions for orders directing contracting officers to issue decisions on claims relating to such contracts, 41 U.S.C. 605(c)(4). The Board may apply through the Attorney General to an appropriate United States District Court for an order requiring a person, who has failed to obey a subpoena issued by the Board, to produce evidence or to give testimony, or both, 41 U.S.C. 610.

(b) *General Powers and Authorities.* The Board's general powers include, but are not limited to, the powers to:

(1) Manage its cases and docket; issue procedural orders; conduct conferences and hearings; administer oaths; authorize and manage discovery, including depositions and the production of

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documents or other evidence; take official notice of facts within general knowledge; call witnesses on its own motion; engage experts; dismiss actions with or without prejudice; decide all questions of fact or law raised in an action; and make and publish rules of practice and procedure;

(2) Exercise, in proceedings to which it applies, all powers granted to arbitrators by the Federal Arbitration Act, 9 U.S.C. 1-14, including the power to issue summonses.

(c) In addition to its authorities under the CDA, the Board has been delegated by Delegation Order 0204-162 issued by the Secretary of Energy, the following authorities:

(1) Issue rules, including rules of procedure, not inconsistent with this section and departmental regulations;

(2) Issue subpoenas under the authority of § 161.c of the Atomic Energy Act of 1954, 42 U.S.C. 2201(c), as applicable;

(3) Such other authorities as the Secretary may delegate.

### § 1023.5 Duties and responsibilities of the Chair.

The Chair shall be responsible for the following:

(a) The proper administration of the Board;

(b) Assignment and reassignment of cases, including alternative dispute resolution (ADR) proceedings, to administrative judges, hearing officers, and decision panels;

(c) Monitoring the progress of individual cases to promote their timely resolution;

(d) Appointment and supervision of a Recorder;

(e) Arranging for the services of masters, mediators, and other neutrals;

(f) Issuing delegations of Board authority to individual administrative judges, panels of judges, commissioners, masters, and hearing officers within such limits, if any, which a majority of the members of the Board shall establish;

(g) Designating an acting chair during the absence of both the Chair and the Vice Chair;

(h) Designating a member of another Federal board of contract appeals to serve as the third member of a decision panel if the Board is reduced to less

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than three members because of vacant positions, protracted absences, disabilities or disqualifications;

(i) Authorizing and approving ADR arrangements for Board cases; obtaining non-Board personnel to serve as settlement judges, third-party neutrals, masters and similar capacities; authorizing the use of Board-provided personnel and facilities in ADR capacities, for matters before the Board, and for other matters when requested by officials of the DOE; and entering into arrangements with other Federal administrative forums for the provision of personnel to serve in ADR capacities on a reciprocal basis;

(j) Recommending to the Secretary the selection of qualified and eligible members. New members shall, upon selection, be appointed to serve as provided in the CDA;

(k) Determining whether member duties are consistent with the CDA; and

(l) Reporting Board activities to the Secretary not less often than biennially.

### § 1023.6 Duties and responsibilities of Board members and staff.

(a) As is consistent with the Board's functions, Board members and staff shall perform their duties with the highest integrity and consistent with the principles set forth in § 1023.3.

(b) Members of the Board and Board attorneys may serve as commissioners, magistrates, masters, hearing officers, arbitrators, mediators, and neutrals and in other similar capacities.

(c) Except as may be ordered by a court of competent jurisdiction, members of the Board and its staff are permanently barred from ex parte disclosure of information concerning any Board deliberations.

### § 1023.7 Board decisions; assignment of judges.

(a) In each case, the Chair shall assign an administrative judge as the Presiding Administrative Judge to hear a case and develop the record upon which the decision will be made. A Presiding Judge has authority to act for the Board in all non-dispositive matters, except as otherwise provided in this Part. This subparagraph shall